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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R No.95 of 1999
Date of decision:8.12.2006

C.I.T., Rohtak **...Petitioner**

Versus

M/S Rameshwar Dass Suresh Pal Cheeka

...Respondent

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Yogesh Putney, Advocate for the revenue

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JUDGMENT

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh arising out of its order dated 8.7.1997 passed in I.T.A.No.725/Chandi/91, in respect of the assessment year 1987-88.

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in deleting the aggregate addition of Rs.70,000/- made by the AO and confirmed by the CIT(A) on account of cash credits u/s 68 of the I.T.Act, 1961?"

During the course of assessment for the assessment year 1987-88, the Assessing Officer found that Smt.Kamlesh Rani, Partner introduced a sum of Rs.40,000/- in her capital account on 21.3.1987. She explained that she was a regular assessee for the last several years and apart from being a partner of the assessee firm, she had income from interest and other sources, which were declared under the Amnesty Scheme. She had also deposited a sum Rs.30,000/- in her account, which she had received by way of gifts and shaguns at the time of her marriage in 1986.

The Assessing Officer did not accept the explanation of

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Smt.Kamlesh Rani and added the amount to the income of the firm. The CIT(A) confirmed both the additions.

The Tribunal accepted the plea of the assessee that once Smt.Kamlesh Rani, partner accepted having made the deposits, no addition can be made in the income of the firm. Reliance was placed, inter-alia, on **Commissioner of Income-tax, Orissa Vs. Orrissa Corporation P.Ltd. (1986) 159 ITR 78 (SC), Commission of Income Tax Vs. Ram Narain Goel (1997) 224 ITR 180(P&H), Commissioner of Income-Tax, Allahbad Vs.Jaiswal Motor Finance (1983) 141 ITR 706(Allahabad) and Narayandas Kedar Nath Vs. Commissioner of Income-Tax, Central (1952) 22 ITR 18 (Bombay).**

We have heard learned counsel for the revenue and perused the record.

It is well settled that whether explanation of the assessee about nature and source of the amounts credited in the books of account was satisfactory is a question of fact. In our recent order dated 24.10.2006 in **The Shiv Rice & General Mills, Jaitu through its Partner Shri Hari Krishan Vs. Commissioner of Income Tax, Central Revenue Building, Bathinda, ITA No.400 of 2006,** we observed as under:-

> "In **Oceanic Products Exporting Co. Vs. Commissioner of Income Tax,(2000) 241 ITR 497 (Ker) and R.B.Mittal Vs. Commissioner of Income Tax, (2000) 246 ITR 283 (AP),** the view taken is that the findings on cash credits are findings of fact. Under similar circumstances, this Court in ITC No.1 of 1998 titled as **M/S Masu Am Makhan Lal Vs. Commissioner of Income Tax,** vide judgment dated October 11, 2004, held that findings recorded on cash credits are findings of facts giving rise to no question of law, much less a substantial question of law being the requirement under Section 260A of the Act, for

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entertainment of the appeal."

We are also in agreement with the view taken by the Tribunal that no case was made out for addition to the income of the firm even if deposits made with the firm by the partners were unexplained income of the partners. This view has been taken by us in our recent order passed on 6.11.2006 in ITA No.370 of 2006 **Commissioner of Income-tax, Chandigarh -II Vs. M/S Metal & Metals of India, Mohali**, wherein it was observed as under:-

> "In the present case, the firm has given explanation about the source namely Suresh Bhandari, partner, who himself is an assessee. The said partner has admitted having made deposit with the firm. Thus, as far as the firm is concerned, even if the gift claimed to have been received by Suresh Bhandari is to be rejected, the said Suresh Bhandari may be liable to be taxed by treating the said amount as undisclosed income, but the firm cannot be subjected to tax on that ground"

We may also refer to the judgments relied upon by the Tribunal. In **Commissioner of Income-Tax, Allahbad Vs.Jaiswal Motor Finance (1983) 141 ITR 706(Allahabad),** it was observed as under:-

> ".....It appears to be well settled that if there are cash credit entries in the books of the firm in which the accounts of the individual partners exist and it is found as a fact that cash was received by the firm from its partners then in the absence of any material to indicate that they were profits of the firm, it could not be assessed in the hands of the firm."

In **Narayandas Kedar Nath Vs. Commissioner of Income-Tax, Central (1952) 22 ITR 18(Bombay),** it was observed as under:-

> "..... There may be a genuine case where a partner or a stranger may bring in moneys to the credit of the firm

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and the partner or the stranger may have come into those moneys by thoroughly dishonest means, but it is not for the firm which is being assessed to satisfy the department that the moneys which it received from the partner or the stranger were moneys which the partner or the stranger obtained by honest means. In my opinion that would be throwing too heavy a burden upon the assessee. We do not wish to lay down any general law which should apply to all cases. In most cases it would depend upon the facts actually found. On the facts actually found and strictly confining our decision to the facts of this case we are of opinion that there were no materials on which the department could have come to the conclusion that these credits represented undisclosed profits of the firm."

In **Commissioner of Income-tax, Orissa Vs. Orrissa Corporation P.Ltd. (1986) 159 ITR 78,** the Hon'ble Supreme Court observed as under:-

"In this case, the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesses. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that

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such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."

In **Commission of Income Tax Vs. Ram Narain Goel (1997) 224 ITR 180,** this Court held as under:-

"..... The Tribunal correctly took the view that the assessee was not supposed to prove the source of the loans. Suspicion, howsoever, strong, cannot take the place of evidence or proof."

We may also refer to the judgment of the Supreme Court on this issue in **Girdhari Lal Nannelal Vs. Sales Tax Commissioner, M.P. (1977) 109 ITR 726,** wherein the Supreme Court observed as under:-

"Further, where, as in a case like the present, a credit entry in respect of Rs.10,000/- stands in the name of the wife of the partner, no presumption arises that the said amount represents the income of the firm and not of the partner or his wife. The fact that neither the assessee-firm nor its partner or his wife adduced satisfactory material to show the source of that money would not, in the absence of anything more, lead to the inference that the said sum represents the income of firm accruing from undisclosed sale transactions."

In view of the above, the question referred is answered against the Revenue and in favour of the assessee.

The reference is disposed of.

(Adarsh Kumar Goel)
Judge

December 08,2006 **(Rajesh Bindal)**
Pka **Judge**